

FIRST REGULAR SESSION

# SENATE BILL NO. 140

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SMITH.

Pre-filed December 22, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

0849S.011

## AN ACT

To repeal section 568.040, RSMo, and to enact in lieu thereof two new sections relating to criminal nonsupport, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 568.040, RSMo, is repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 478.495 and 568.040, to read as  
3 follows:

**478.495. 1. Criminal nonsupport divisions may be established by  
2 any circuit court, within the family courts established under chapter  
3 487, RSMo, to provide an alternative for the criminal justice system to  
4 dispose of cases which stem from criminal nonsupport. A criminal  
5 nonsupport division shall combine judicial supervision, substance  
6 abuse treatment, education including general education development  
7 certificate (GED) programs, vocational or employment training, work  
8 programs, and support payment plans for criminal nonsupport division  
9 participants. Except for good cause found by the court, a criminal  
10 nonsupport division making a referral for education, substance abuse  
11 treatment, vocational or employment training, or work programs, when  
12 such program will receive state or federal funds in connection with  
13 such referral, shall refer the person only to a program which is  
14 certified by a department of the state of Missouri, unless no  
15 appropriate certified program is located within the same county as the  
16 criminal nonsupport division. Upon successful completion of the  
17 education, substance abuse treatment, vocational or employment  
18 training program, work program, or support payment plan, the**

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 defendant becoming gainfully employed, or the defendant commencing  
20 payment of current and accrued support, the charges, petition, or  
21 penalty against a criminal nonsupport division participant may be  
22 dismissed, reduced, or modified. Any fees received by a court from a  
23 defendant as payment for education, substance abuse treatment, or  
24 training programs shall not be considered court costs, charges, or fines.

25       2. Each circuit court shall establish conditions for referral of  
26 proceedings to the criminal nonsupport division. The defendant in any  
27 criminal proceeding accepted by a criminal nonsupport division for  
28 disposition shall be a nonviolent person, as determined by the  
29 prosecuting attorney, and shall be subject to the conditions set forth in  
30 subdivision (4) of subsection 5 of section 568.040, RSMo. Any  
31 proceeding accepted by the criminal nonsupport division program for  
32 disposition shall be upon agreement of the parties.

33       3. Any statement made by a participant as part of participation in  
34 the criminal nonsupport division program, or any report made by the staff  
35 of the program, shall not be admissible as evidence against the participant  
36 in any criminal, juvenile, or civil proceeding. Notwithstanding the  
37 foregoing, termination from the criminal nonsupport division program and  
38 the reasons for termination may be considered in sentencing or disposition.

39       4. Notwithstanding any other provision of law, criminal  
40 nonsupport division staff shall be provided with access to all records  
41 of any state or local government agency relevant to the supervision of  
42 any program participant. Upon general request, employees of all such  
43 agencies shall fully inform criminal nonsupport division staff of all  
44 matters relevant to the supervision of the participant. All such records  
45 and reports and the contents thereof shall be treated as closed records  
46 and shall not be disclosed to any person outside of the criminal  
47 nonsupport division, and shall be maintained by the court in a  
48 confidential file not available to the public.

49       5. In order to coordinate the allocation of resources available to  
50 criminal nonsupport divisions throughout the state, there is hereby  
51 established a "Criminal Nonsupport Divisions Coordinating  
52 Commission" in the judicial department. The criminal nonsupport  
53 divisions coordinating commission shall consist of one member selected  
54 by the director of the department of corrections; one member selected  
55 by the director of the department of social services; one member

56 selected by the director of the department of education; one member  
57 selected by the director of the department of public safety; one member  
58 selected by the state courts administrator; one member selected by the  
59 director of the department of labor and industrial relations; and two  
60 members selected by the Missouri supreme court. The Missouri  
61 supreme court shall designate the chair of the commission. The  
62 commission shall periodically meet at the call of the chair; evaluate  
63 resources available for assessment and training of persons assigned to  
64 criminal nonsupport divisions or for operation of criminal nonsupport  
65 divisions; secure grants, funds, and other property and services  
66 necessary or desirable to facilitate criminal nonsupport division  
67 operation; and allocate such resources among the various criminal  
68 nonsupport divisions operating within the state.

69       6. There is hereby established in the state treasury a "Criminal  
70 Nonsupport Division Resources Fund", which shall be administered by  
71 the criminal nonsupport divisions coordinating commission. Funds  
72 available for allocation or distribution by the criminal nonsupport  
73 divisions coordinating commission may be deposited into the criminal  
74 nonsupport division resources fund. Notwithstanding the provisions of  
75 section 33.080, RSMo, moneys in the criminal nonsupport division  
76 resources fund shall not be transferred or placed to the credit of the  
77 general revenue fund of the state at the end of each biennium, but shall  
78 remain deposited to the credit of the criminal nonsupport division  
79 resources fund.

568.040. 1. A person commits the crime of nonsupport if [he] **such**  
2 **person** knowingly fails to provide, without good cause, adequate support for his  
3 **or her** spouse; a parent commits the crime of nonsupport if such parent  
4 knowingly fails to provide, without good cause, adequate support which such  
5 parent is legally obligated to provide for his **or her** child or stepchild who is not  
6 otherwise emancipated by operation of law.

7       2. For purposes of this section:

8       (1) "Child" means any biological or adoptive child, or any child legitimated  
9 by legal process, or any child whose relationship to the defendant has been  
10 determined, by a court of law in a proceeding for dissolution or legal separation,  
11 to be that of child to parent;

12       (2) "Good cause" means any substantial reason why the defendant is  
13 unable to provide adequate support. Good cause does not exist if the defendant

14 purposely maintains his inability to support;

15 (3) "Support" means food, clothing, lodging, and medical or surgical  
16 attention;

17 (4) It shall not constitute a failure to provide medical and surgical  
18 attention, if nonmedical remedial treatment recognized and permitted under the  
19 laws of this state is provided.

20 3. The defendant shall have the burden of injecting the issues raised by  
21 subdivisions (2) and (4) of subsection 2.

22 4. Criminal nonsupport is a class A misdemeanor, unless [the person  
23 obligated to pay child support commits the crime of nonsupport in each of six  
24 individual months within any twelve-month period, or] the total arrearage is in  
25 excess of [five thousand dollars] **an aggregate of twelve monthly payments**  
26 **due under any order of support issued by any court of competent**  
27 **jurisdiction**, in [either of] which case it is a class D felony.

28 5. **After August 28, 2009, any person convicted of criminal**  
29 **nonsupport shall be punished as follows:**

30 (1) **Except as otherwise provided herein, for a first offense of a**  
31 **nonviolent defendant, criminal nonsupport shall be punished by a**  
32 **suspended imposition of sentence and an appropriate period of**  
33 **probation;**

34 (2) **Except as otherwise provided herein, for a second offense of**  
35 **a nonviolent defendant, criminal nonsupport shall be punished by a**  
36 **suspended execution of sentence and an appropriate period of**  
37 **probation;**

38 (3) **For a third or subsequent offense, the defendant shall be**  
39 **punished within the range for the class of offense that the defendant**  
40 **was convicted of as provided by law;**

41 (4) **If at any time a defendant convicted of criminal nonsupport**  
42 **is placed on probation or parole, there shall be ordered as a condition**  
43 **of probation or parole that the defendant commence payment of**  
44 **current support as well as satisfy the arrearages. Arrearages shall be**  
45 **satisfied first by making such lump sum payment as the defendant is**  
46 **capable of paying, if any, as may be shown after examination of**  
47 **defendant's financial resources or assets, both real, personal, and**  
48 **mixed, and second by making periodic payments. Periodic payments**  
49 **toward satisfaction of arrears when added to current payments due**

50 shall be in such aggregate sums as is not greater than fifty percent of  
51 the defendant's adjusted gross income after deduction of payroll taxes,  
52 medical insurance that also covers a dependent spouse or children, and  
53 any other court ordered support, only. If the defendant fails without  
54 good cause to pay the current support and arrearages as ordered, the  
55 court shall revoke probation or parole and then impose an appropriate  
56 sentence within the range for the class of offense that defendant was  
57 convicted of as provided by law;

58 (5) During any period that a nonviolent defendant is  
59 incarcerated for criminal nonsupport, if the defendant is ready, willing,  
60 and able to be gainfully employed during said period of incarceration,  
61 the defendant, except for good cause shown, shall be placed on work  
62 release to allow the defendant to satisfy defendant's obligation to pay  
63 support. There shall be ordered as a condition of work release that the  
64 defendant commence payment of current support as well as satisfy any  
65 accrued arrearages. Arrearages shall be satisfied first by making such  
66 lump sum payment as the defendant is capable of paying, if any, as may  
67 be shown after examination of defendant's financial resources or assets,  
68 both real, personal, and mixed, and then by making periodic  
69 payments. Periodic payments toward satisfaction of arrears when  
70 added to current payments due shall be in such aggregate sums as is  
71 reasonable after allowance of defendant's reasonable and necessary  
72 work release expenses as may be shown by the defendant. If the  
73 defendant fails without good cause to pay the current support and  
74 arrearages as ordered, the work release program shall be terminated  
75 or revoked;

76 (6) Beginning August 28, 2009, every nonviolent first and second  
77 time offender then incarcerated for criminal nonsupport, who has not  
78 been previously placed on probation or parole, for conviction of  
79 criminal nonsupport, may be considered for parole, under the  
80 conditions set forth in subdivision (4) of this subsection, or work  
81 release, under the conditions set forth in subdivision (5) of this  
82 subsection.

83 6. Beginning January 1, 1991, every prosecuting attorney in any county  
84 which has entered into a cooperative agreement with the division of child support  
85 enforcement shall report to the division on a quarterly basis the number of  
86 charges filed and the number of convictions obtained under this section by the

87 prosecuting attorney's office on all IV-D cases. The division shall consolidate the  
88 reported information into a statewide report by county and make the report  
89 available to the general public.

90 [6.] 7. Persons accused of committing the offense of nonsupport of the  
91 child shall be prosecuted:

92 (1) In any county in which the child resided during the period of time for  
93 which the defendant is charged; or

94 (2) In any county in which the defendant resided during the period of time  
95 for which the defendant is charged.

Unofficial ✓

Bill

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